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DISCUSSION
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MONTANA YOUTH ACT

Governor's Juvenile Justice
Advisory Council
April 1973





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EXPLANATORY PREFACE TO DISCUSSION DRAFT

The enclosed material constitutes a "Discussion Draft" of the operation of the Youth Court (juvenile court) under a comprehensive Montana Youth Act to be presented to the 1974 Montana Legislature. It is the preliminary work of the Juvenile Justice Advisory Council appointed by the Governor in August, 1972 and charged with the duty of reviewing and revising Montana juvenile laws.

The enclosed draft is simply a preliminary draft being disseminated to interested individuals, groups and agencies throughout Montana for discussion, comment, criticism and revision. It is in no sense to be regarded as a final draft nor is it intended to be the last word on the subject. It is merely a starting point for discussion.

The JJAC intends to conduct meetings throughout the state to secure comments, suggestions and criticisms from the "grassroots," the general public. Following such public meetings and discussions, the JJAC intends to "go back to the drawing board" and revise the discussion draft accordingly. The final draft will be submitted to the 1974 state legislature.

JJAC welcomes comments, suggestions and criticisms from the general public. A questionnaire has been included with this document to give all persons an opportunity to respond. If you have questions or ideas not covered by the questionnaire, kindly send them to the following address:

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PROPOSED MONTANA YOUTH ACT: DISCUSSION DRAFT

Section 1. SHORT TITLE--Section 1 through ____ of this act may be cited as the

"Montana Youth Act."

Comment: Self-explanatory

SECTION 2 LEGISLATIVE PURPOSE--The Montana Youth Act shall be interpreted and construed to effectuate the following express legislative purpose:

A. to preserve the unity and welfare of the family whenever possible and to provide for the care, protection and wholesome mental and physical development of youth coming within the provisions of the Montana Youth Act.

B. to remove from youth committing violations of law the element of retribution and to substitute therefore a program of supervision, care and rehabilitation;

C. to achieve the foregoing purpose in a family environment whenever possible, separating the youth from his parents only when necessary for his welfare or for the safety and protection of the community.

D. to provide judicial procedures through which this Act is executed and enforced and in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights.

Comment: Statement of general purposes of the Montana Youth Act. It is designed to indicate legislative intent and serve as an aid to interpretation and construction of the various provisions of the Act.

SECTION 3. DEFINITIONS--As used in this Act:

- A. "abuse" means any situation in which a child exhibits evidence of skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive, or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be a product of an accidental occurrence;
- B. "adult" means an individual who is eighteen years of age or older;
- C. "agency" when used in this Act means the Department of Institutions, the Department of Social and Rehabilitation Services, and any division or department of either;
- D. "commit" means to transfer to legal custody;
- E. "court", when used without further qualification, means the youth division of the district court;
- F. "custodian" means a person, other than a parent or guardian, to whom legal custody of the child has been given, but does not include a person who has only physical custody;
- G. "district court" means the district court of the State of Montana;
- H. "foster home" means the private residence of a person designated by the youth division as guardian for a youth;
- I. "guardianship" means that status created by law between a youth and an adult with its reciprocal rights, duties and responsibilities, including, but not limited to:
 - (1) the authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric and surgical treatment;
 - (2) the authority to represent the youth in legal actions and to make other decisions of substantial legal significance concerning the youth;
 - (3) the authority and duty of reasonable visitation of the youth;
 - (4) the rights and responsibilities of legal custody when the physical custody

SECTION 3. DEFINITIONS, cont'd.

of the youth is exercised by the youth's parents, except when legal custody has been vested in another person; and

(5) when the rights of his parents have been terminated as provided for in the laws governing termination of parental rights or when both of his parents are deceased, the authority to consent to the adoption of the youth and to make any other decision concerning him which his parents could have made;

J. "Judge" means the judge of the youth division of the district court'

K. "legal custody" means a legal status created by the order of a court of competent jurisdiction that vests in a person the right to have physical custody of the youth, the right to determine when and with whom he shall live, the right and duty to protect, train, and discipline the youth and to provide him with food, shelter, education, and ordinary medical care, all subject to the powers, rights, duties and responsibilities of the guardian of the youth and subject to any existing parental rights and responsibilities; an individual granted legal custody of a youth shall exercise his rights and responsibilities as custodian personally unless otherwise authorized by the court entering the order;

L. "necessary parties" means a youth, his parents, guardian custodian or spouse;

M. "parent" when used in this Act, refers to the natural or adoptive parent but does not include persons whose parental rights have been judicially terminated, nor does it include the putative father of a youth whose parenthood has not been judicially established;

N. "person" means an individual or any other form of entity recognized by law;

O. "protective supervision" means a legal status created by court order under which a child is permitted to remain in his own home or is placed with a relative or other suitable individual and supervision and assistance are provided by the court or some other agency designated by the court.

SECTION 3. DEFINITIONS, cont'd.

P. "youth" means an individual who is less than eighteen years of age without regard to sex or emancipation;

Q. "youth division" means the judge, youth counselors, probation officers and all others authorized by law to process cases under this Act;

R. "youth in need of assistance" means a youth:

(1) who has committed an offense which, if committed by an adult, would constitute a criminal offense, including the following offenses under the Motor Vehicle Code:

(a) driving while under the influence of intoxicating liquor or drugs;

(b) failure to stop in the event of an accident causing death, personal injuries or damage to property;

(c) reckless driving;

(d) driving without a valid operator's license or permit;

(2) who, having been placed on probation pursuant to this Act, repeatedly violates the conditions of his probation;

(3) who has committed an offense which, if committed by an adult, would not constitute a criminal offense;

(4) who, being subject to compulsory school attendance, is habitually truant from school;

(5) who habitually disobeys the reasonable and lawful demands of his parents, guardian, custodian and is ungovernable and beyond their control;

(6) whose parent, guardian or legal custodian has abandoned him to mistreatment or abuse, or whose parent, guardian or custodian has allowed another to mistreat or abuse the youth without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;

(7) who lacks proper parental care through the actions or omissions of a parent, guardian or custodian;

SECTION 3. DEFINITIONS, cont'd.

(8) whose parents, guardian, or custodian are unable to unwilling discharge their responsibilities to and for the youth because of their incarceration, hospitalization, or other physical or mental incapacity;

(9) whose environment is injurious to his welfare;

(10) whose parent, guardian or custodian fails to refuses to provide proper and necessary subsistence, education, medical care or any other care necessary for his health, guidance and well-being;

(11) who is homeless, without proper care, or is not domiciled with his parent, guardian or custodian through no fault of his parent, guardian or custodian;

(12) who, in any of the foregoing situations, is in need of care or rehabilitation;

S. "shelter care" means temporary care of a youth in physically non-restricted facilities.

Comment: Self-explanatory

SECTION 4. REPEALER CLAUSE--

Comment: this section repeals certain specific statutes in the present law and all conflicting provision of existing law. Refer to booklet entitled "Montana Juvenile Law" for text of statutes repealed.

SECTION 5. CONSTITUTIONALITY--The provisions of this act are separate and severable. If any part of this act is held to be unconstitutional, or invalid, such holding shall not affect the validity of the remaining provisions of the act.

Comment: This is a standard "severability" provision. Its purpose is to prevent the entire Montana Youth Act from being declared invalid in the event some specific provision is later ruled unconstitutional.

SECTION 6. NUMBER AND GENDER--The singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine unless the context indicates otherwise.

Comment: Self-explanatory.

SECTION 7. JURISDICTION OF THE COURT--

Alternative I.

- A. The court has exclusive original jurisdiction of all proceedings under the Montana Youth Act in which a youth is alleged to be a youth in need of assistance.
- B. Additionally the court has exclusive original jurisdiction of the following proceedings:
 - (1) for the termination of parental rights;
 - (2) for the adoption of a minor;
 - (3) under the Interstate Compact on Juveniles;
 - (4) to determine the custody of, or to appoint a custodian or a guardian for a youth;
 - (5) for the commitment of a mentally retarded or mentally ill youth; and
 - (6) to authorize the marriage of a youth who does not have a parent or guardian

Alternative II.

- A. The court has exclusive original jurisdiction of all proceedings under the Montana Youth Act in which a youth is alleged to be a youth in need of assistance.

Comment: Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

A "youth in need of assistance" encompasses (1) a delinquent youth, (2) a dependent and neglected youth, and (3) a youth in need of supervision. For a detailed and comprehensive definition of "youth in need of assistance" see Section 3R of this discussion draft.

Alternative I. Provides for exclusive, original jurisdiction in the court of related matters commonly encountered in dealing with a "youth in need of assistance". Under the present law these related matters, which are specifically enumerated in B (1) through (6), are handled by the

SECTION 7. JURISDICTION OF THE COURT--cont'd.

Alternative II. The district court, as distinguished from the Youth court, retains jurisdiction over the proceedings enumerated in B (1) through (6). The Youth court has no jurisdiction over these latter proceedings.

SECTION 8. VENUE AND TRANSFER--

Alternative I.

A. All proceedings under the provisions of the Montana Youth Act may be commenced in the court of any one of the following counties of the state:

- (1) the county of the youth's residence;
- (2) the county in which the youth is apprehended or found;
- (3) the county in which the youth is alleged to have violated the law;
- (4) the county residence of the youth's parents, guardian or custodian

B. Proceedings for a change of venue shall be governed exclusively by trial convenience. Such proceedings may be instituted by any interested party or by the court on its own motion. The provisions of the Montana Code of Civil Procedure governing change of venue for trial convenience shall apply to all proceedings under this Act. In the event of transfer, three copies of all legal and social records shall accompany the transfer order.

C. Provisions relating to the transfer of cases from the youth division of the district court to the adult criminal court shall be governed by Section 33 of this Act.

Alternative II.

A. Proceedings in the court under the provisions of the Montana Youth Act shall be begun in the county where the youth resides. If need of assistance under Section 3 (R) 1 through 5 is alleged, the proceeding may also be begun in the county where the act constituting an offense occurred. If need of assistance under Section 3 (R) 6 through 12 is alleged, the proceeding may also be begun in the county where the youth is present.

B. If a proceeding is begun in a court for a county other than the county in which the youth resides, that court, on its own motion or on the motion of a party made at any time prior to disposition of the proceeding, may transfer the proceeding to the court for the county of the

SECTION 8. VENUE AND TRANSFER--cont'd.

Alternative II., cont'd.

youth's residence for such further proceedings as the receiving court deems proper. A like transfer may be made if the residence of the youth changes during the proceedings, or if the youth has been adjudicated in need of assistance and other proceedings involving the youth are pending in the county of his residence. Certified copies of all legal and social records pertaining to the proceeding shall accompany the case on transfer.

Alternative III.

The county where a youth is a resident shall have primary jurisdiction over any youth charged with being in need of assistance and the court of that county shall assume the handling of the cause. In the case of a youth sixteen (16) years of age or over who is accused of one of the serious offenses listed in Section 33 the court in the county where the offense occurred shall serve as the transfer hearing court and if the youth is to be tried in the district court the charge shall be filed and the trial held in the district court of the county where the offense occurred, otherwise the matter shall be transferred to the county where the youth is a resident.

Comment: Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions, and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

This section governs the county in which a Youth Court case can be filed originally, and the circumstances under which such a case may be transferred to the Youth of another county.

Alternative 1 provides for filing a youth Court case in any one of the counties set forth in Subsection A, 1 through 4. It provides for subsequent transfer of the case to the county where a trial can be most conveniently held (for example, the county where the majority of

SECTION 8. VENUE AND TRANSFER--cont'd.

Comment cont'd.

witnesses are located.)

Alternative II provides for filing initially in the county of the youth's residence subject to the exceptions enumerated in subsection A.

Alternative III is the present statute providing primary jurisdiction in the county of the Youth's residence (see Revised Codes of Montana [hereinafter referred to as R.C.M., 1947] 1947, ¶ 10-603(e) in the booklet "Montana Juvenile Law" for a complete text of the present statute.

SECTION 9. RETENTION OF JURISDICTION--Jurisdiction of the court once obtained shall continue until terminated by the court subject to mandatory termination in the following cases:

- A. at the time the proceedings are transferred to adult criminal court;
- B. at the time of commitment of the youth to the custody of the State Department of Institutions unless otherwise provided by law;
- C. in any event, at the time the youth reaches the age of twenty-one (21) years.

Comment: This section provides for the mandatory termination of the youth court's jurisdiction under the circumstances set forth in subsections A, B and C.

SECTION 10. PRELIMINARY INQUIRY--

A. Whenever the Youth Division is informed by any person that a person is, or appears to be, within the court's jurisdiction, as provided in Section 3 R(1-12), a preliminary inquiry shall be made to determine whether the interest of the public or the child require that further action be taken. Complaints alleging that a youth in need of assistance under Section 3 R(6-12), shall be referred to the State Department of Social and Rehabilitation Services in which the alleged youth in need of assistance is located at the time complaint is made. The State Department of Social and Rehabilitation Services shall proceed in the matter in accordance with the law.

B. The Youth Division may require the presence of any person relevant to the inquiry, and may request subpoenas from the court to accomplish this purpose.

C. After completion of the preliminary inquiry, the Youth Division shall either:

- (1) terminate the inquiry;
- (2) make an informal adjustment including placing of the youth on probation;
- (3) refer the complaint to the County Attorney for filing of a petition charging the youth with being a youth in need of assistance;

D. When a youth is in detention or custody and the filing of a petition is not authorized by the youth division, the youth shall be released immediately. While in detention, a petition alleging need of assistance shall be dismissed with prejudice if it was not filed within 7 days from the date the youth was first confined.

SECTION 10. PRELIMINARY INQUIRY--

Comment: This section relates to preliminary and informal procedures used in handling cases involving a "youth in need of assistance". For a comprehensive definition of that term, see Section 3 (R) of this discussion draft.

Informal complaints involving a "youth in need of assistance" by reason of parental neglect or abuse Section 3 (R) 6 through 12) are referred to the County Department of Social and Rehabilitation Services (Welfare Department) for handling.

Informal complaints alleging a youth in need of assistance for other reasons are handled informally by a probation officer or referee, if possible; otherwise they are referred to the county attorney for formal proceedings within the Youth Court.

Protections for the youth are required including advice of his rights, the personal appearance of the complainant and time limitations in holding the youth in custody or processing his case.

SECTION 11. INFORMAL CONSENT ADJUSTMENT--

Alternative I.

A. Before a petition is filed, the chief youth probation officer or referee may give counsel and advice to the youth and other interested parties with a view to an informal adjustment if it appears:

- (1) the admitted facts bring the case within the jurisdiction of the court;
- (2) counsel and advice without filing a petition would be in the best interests of the child and the public; and
- (3) the child, his parents, guardian or custodian consent thereto in writing with the knowledge that consent is not obligatory.

B. The giving of counsel and advice cannot extend beyond three months from the day commenced unless extended by the court for an additional period not to exceed three months and does not authorize the detention of the child.

C. An incriminating statement relating to any act falling under Section 3 (R) 1 and 2 of this Act made by the participant to the person giving counsel or advice and in the discussions or conferences incident thereto shall not be used against the declarant in any proceeding under this Act, nor shall such incriminating statement be admissible in any criminal proceeding against the declarant.

Alternative II.

A. Before a petition is filed, the chief youth probation officer or referee may give counsel and advice to the youth and other interested parties with a view to an informal adjustment if it appears:

- (1) the admitted facts bring the case within the jurisdiction of the court;
- (2) counsel and advice without filing a petition would be in the best interests of the child and the public; and
- (3) the child, his parents, guardian or custodian consent thereto in writing with

SECTION 11. INFORMAL CONSENT ADJUSTMENT--cont'd.

Alternative II., cont'd.

B. An incriminating statement relating to any fact described in Section 3 (R) 1 and 3 made by the participant to the person giving counsel or advice and in the discussions or conferences incident thereto shall not be used against the declarant in any proceeding under this Act nor shall such incriminating statement be admissible in any criminal proceedings against the declarant.

Comment: This section covers informal consent adjustments prior to the filing of any petition in the Youth Court. It requires consent of the youth and his parents to such informal handling and adjustment.

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

The difference between the two alternative proposals lies in the counseling and detention provisions. Alternative I provides a time limitation on counselling to a maximum to six months, and prohibits holding the child in detention (Subsection B). Alternative II eliminated the requirements by deleting subsection B of Alternative I.

SECTION 12. TAKING INTO CUSTODY--A child may be taken into custody:

Alternative I.

A. Pursuant to the order of the court endorsed on the summons because the youth need to be detained;

B. pursuant to the order of the court issued because a parent, guardian or custodian fails when requested to bring the youth before the court after having promised to do so when the youth was delivered upon release from custody;

C. pursuant to the laws of arrest for commission of acts defined in subsections 1 through 3 of Section 3 of this Act.

D. by a law enforcement officer when the officer has reasonable grounds to believe that the youth is suffering from illness or injury or is in immediate danger from the youth's surroundings, and removal from those surroundings is necessary.

E. by a law enforcement officer when he has reasonable grounds to believe that the youth has run away from his parents, guardian or custodian; and

F. the taking of a youth into custody is not an arrest, except for the purpose of determining its validity under the constitution of this state or of the United States.

Alternative II.

A. A youth may be taken into custody by a law enforcement officer under any of the following circumstances:

(1) pursuant to the lawful order or process of any court;

(2) pursuant to a lawful arrest for violation of the law;

(3) when reasonable grounds exist for the belief that taking the youth into custody is necessary or advisable to protect the youth from physical, mental or moral injury to himself from any cause.

B. The taking of a youth into custody is not an arrest except for the purpose of determining its validity under the Constitution of this state or of the United States.

SECTION 12. TAKING INTO CUSTODY--cont'd.

Comment: This section governs the circumstances under which a youth may be taken into custody. The provisions of the present law are contained in R. C. M., 1947, §10-608.1, the full text of which is found on pages 15 and 16 of the booklet "Montana Juvenile Law."

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions, and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

The difference between the two alternatives is that alternative I is more specific as to the circumstances under which a youth may be taken into custody, while alternative II is more general.

SECTION 13. DETENTION OF YOUTH--A youth taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the youth or because the youth may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required, or an order for his detention or shelter care has been made by the court pursuant to this Act.

Comment: This section governs the situations under which a youth may be held in detention or shelter care prior to the hearing in the Youth Court. The provisions of existing law are R. C. M., 1947 § 10-608.1(3), the full text of which is found on page 16 of the booklet, "Montana Juvenile Law".

SECTION 14. RELEASE OR DELIVERY FROM CUSTODY--

Alternative I.

A. A person taking a youth into custody shall, with all reasonable speed;

(1) release the youth to the youth's parents, guardian, or custodian and issue verbal counsel or warning as may be appropriate; or

(2) release the youth to the youth's parents, guardian or custodian upon their written promise to bring the youth before the court when requested by the court, and if the parents, guardian or custodian fail, when requested, to bring the youth before the court as promised, the court may order the youth taken into custody and brought before the court; or

(3) deliver the youth to the court or to a place of detention designated by the court, or to a medical facility, if the youth is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment or prompt diagnosis.

B. When a youth is delivered to the court, or to a place of detention designated by the court, a probation officer, prior to the placing of the youth in detention shall review the need for detention and shall release the youth from custody unless detention is appropriate under the criteria established by this Act.

C. If a youth is taken into custody and is not released to the youth's parents, guardian or custodian, the person taking the youth into custody shall give written notice thereof immediately, and in no case later than twenty-four (24) hours, to the youth's parents, guardian or custodian and to the court together with a statement of the reason for taking the youth into custody.

D. In all cases when a youth is taken into custody he shall be released to his parents, guardian or custodian within twenty-four (24) hours of the time he was taken into custody unless he is placed in detention under the provisions of Section 13 of this Act.

Alternative II.

A. Whenever the peace officer believes, on reasonable grounds, that the youth can be released to a parent, guardian or other person who has had custody of the youth then the peace officer may release the youth to that person or persons upon receiving a written promise from him or them to bring the youth before the youth division or the youth probation officer at a time and place specified in the written promise.

B. Whenever the peace officer believes, on reasonable grounds, that the youth must be held in custody until his appearance in youth division court, then the peace officer must deliver the youth to the youth court or youth probation officer without undue delay. If it is necessary to hold the youth pending appearance before the youth court then the youth must be held in some place that has been approved by the youth court and completely separated from adult offenders.

C. Whenever any peace officer has apprehended a youth as hereinabove provided, he shall, as soon as practicable, notify the youth court or probation officer of such fact with a written report of his reasons for the apprehension.

Comment: This section imposes requirements on the person taking a youth into custody with respect to releasing the youth from custody or transferring custody of the youth to another person or agency.

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

Alternative I imposes strict requirements relative to release and transfer from custody with time limitations and notification requirements to the youth's parents.

Alternative II is the existing law contained in R. C. M., 1947, § 10-608.1(2), (3) and (4) found

SECTION 14. RELEASE OR DELIVERY FROM CUSTODY--cont'd.

Comment, cont'd.

on pages 15 and 16 of the booklet "Montana Juvenile Law". It provides for the handling of releases and transfers within the youth court apparatus with no specific time limitations.

SECTION 15. PLACE OF DETENTION--

Alternative I.

A. A youth alleged to be in need of assistance under Section 3 (R) 1 and 2 may be detained only in:

- (1) a licensed foster home or a home approved by the court;
- (2) a facility operated by a licensed child welfare agency;
- (3) a detention home or center which is under the direction or supervision of the court or other public authority or of a private agency approved by the court; or
- (4) any other suitable place or facility, designated or operated by the court. The youth may be detained in a jail or other facility for the detention of adults only if the facility in paragraph (3) is not available, the detention is in an area separate and removed from those of adults, it appears to the satisfaction of the court that public safety and protection reasonably require detention, and it so orders.

B. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility and shall bring him before the court upon request or deliver him to a detention or shelter care facility designated by the court.

C. A youth alleged to be in need of assistance under Section 3 (R) 3 through 12, shall be placed in a shelter care only in the facilities stated in paragraphs 1, 2, and 4 or subsection A and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of youths alleged to be in need of assistance by virtue of violations of the law.

Alternative II.

A. A youth alleged to be in need of assistance under Section 3 (R) 1 and 2 may be detained only in:

SECTION 15. PLACE OF DETENTION--cont'd.

Alternative II., cont'd.

- (1) a licensed foster home or a home approved by the court;
- (2) a facility operated by a licensed child welfare agency;
- (3) a detention home or center which is under the direction or supervision of the court or other public authority or of a private agency approved by the court; or
- (4) any other suitable place or facility, designated or operated by the court.

The youth may be detained in a jail or other facility for the detention of adults only if the facility in paragraph (3) is not available, the detention is in a room separate and removed from those of adults, it appears to the satisfaction of the court that public safety and protection reasonably require detention, and it so orders.

B. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility and shall bring him before the court upon request or deliver him to a detention or shelter care facility designated by the court.

Comment:

This section imposes limitation on places where a youth may be held in detention. Existing law is contained in R. C. M., 1947 §10-608.1, 10-626 and 10-627, the text of which can be found in the booklet "Montana Juvenile Law".

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

The difference between the two alternatives is that Alternative I prohibits detention of

SECTION 15. PLACE OF DETENTION--cont'd.

Comment, cont'd.

(1) dependent and neglected youth and (2) youth in need of supervision in a jail while alternative II contains no such prohibition. The definitions for dependent and neglected youths and youth in need of supervision are contained in Section 3 (R) 3 through 12 of this discussion draft

Under both alternatives a youth involved in a delinquency case may be housed in a jail

SECTION 16. PETITION--PRELIMINARY DETERMINATION--

Alternative I.

A. A petition initiating proceedings under this Act shall be made by the County Attorney with the express consent of the youth division except that a representative of an agency licensed to provide care or supervision of youths or social services for families may make a petition alleging a youth as in need of assistance under Section 3 (R) 3 through 12 of this Act.

B. A petition under this Act shall not be filed unless the youth division chief, probation officer or county attorney has determined and endorsed upon the petition that the filing of the petition is in the best interests of the youth.

Alternative II.

A petition initiating proceedings under this Act shall be made only by the county attorney but shall be made with the express consent of the youth division or a representative of an agency licensed to provide care or supervision of youths or social services to families.

Comment: This provision places responsibility in the county attorney for filing all petitions in the Youth Court initiating proceedings under this Act.

The chief difference between the two alternatives is that alternative I requires that the chief youth probation officer or county attorney determine that the best interests of the youth require the filing of a petition, while alternative II deletes this requirement

Alternative I permits the filing of a petition in a dependent and neglected youth case or a case involving a youth in need of supervision by a Social Service agency, while alternative II omits this provision and requires the consent of the youth division or a Social Service representative in all cases.

The present law is contained in R.C.M., 1947, §10-605.1 (2) and (3) which can be found on page 14 of the booklet "Montana Juvenile Law".

SECTION 17. PETITION--FORM AND CONTENT--A petition initiating proceedings under this Act shall be entitled, "In the Matter of _____, a youth," and shall be set forth with specificity:

- A. the facts necessary to invoke the jurisdiction of the court together with a statement when need of assistance is alleged that the youth is in need of assistance, care or rehabilitation;
- B. if violation of a criminal statute or other law or ordinance is alleged, the citation to the appropriate law;
- C. the name, birth date and residence address of the youth;
- D. the names and residence addresses of parents, guardian, custodian and spouse, if any, of the youth; and if none of the parents, guardian, custodian or spouse, if any, resides or can be found within the state, or if there be none, the known adult relative residing nearest to the court;
- E. whether the child is in custody, and if so, the place of detention and the time he was taken into custody; and
- F. if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known.
- G. A list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses, shall be furnished to the youth upon request.

Comment: This section sets forth in detail what a petition in the Youth Court must contain. Its purpose is to require full and detailed disclosure of the nature of the case to enable the youth involved to protect and defend himself.

Existing law is contained in R. C. M., 1947 §10-605.1 (2) and (3), the full text of which is contained on page 14 of the booklet "Montana Juvenile Law". Existing law is very terse, general, and lacks specificity.

SECTION 18. SUMMONS--

A. After petition has been filed, summons shall be issued directed to the youth and, to his parents, guardian, or custodian, and if applicable, to his spouse, and to such other persons as the court considers proper.

B. The summons shall require the youth to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Montana Youth Act and shall have attached to it a copy of the petition.

C. The court may endorse upon the summons an order directing the parents, guardian, custodian or other person having the physical custody or control of the youth to bring the youth to the hearing.

D. If it appears from any sworn statement presented to the court that the youth needs to be placed in detention, the judge may endorse on the summons an order that an officer serving the summons shall at once take the youth into custody and take him to the place of detention designated by the court, subject, however, to all of the provisions of the Montana Youth Act relating to detention criteria and post-detention proceedings and the rights of the youth in regard thereto.

E. A party, other than the youth, may waive service to summons by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing his counsel may waive service of summons in his behalf.

Comment: This section deals with the contents and issuance of summons in a Youth Court case. The requirements are self-explanatory.

There is no comparable provision in the present Montana law other than a citation procedure in the event of non-appearance. The existing law can be found in R.C.M., 1947, §10-606 on page 14 of the booklet "Montana Juvenile Law."

SECTION 19. SERVICE OF SUMMONS--

A. Any youth who is the subject of a proceeding under this Act must be personally served with a copy of the petition and summons within a reasonable time before a hearing.

B. If a necessary party to be served with a summons is within this state and can be found, the summons shall be served upon him personally within a reasonable time before a hearing. If he is within this state and cannot be found, but his address is known or can, with reasonable diligence, be ascertained, the summons may be served upon him by mailing a copy by registered or certified mail at least 5 days before the hearing. If he is without this state but can be found or his address is known, or his whereabouts or address can be ascertained with reasonable diligence, service of summons may be made either by delivering a copy to him personally or mailing a copy to him by registered or certified mail at least 5 days before the hearing.

C. If a necessary party cannot be located before a hearing and has not secluded himself with intent to delay or disrupt any proceeding under this Act, such party may appear subsequent to the hearing and, on motion to the court, may request a rehearing at which he can be present. The motion shall be granted at the discretion of the judge if a rehearing would be in the youth's best interest.

D. Service of summons may be made by a suitable person under the direction of the court.

E. The court may authorize the payment from county funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

Comment: This section requires personal service of summons and petition on the youth. It provides a procedure for giving service to the parents and other necessary parties.

The present Montana law is contained in R. C. M., 1947 §10-607, the full text of which is found on pages 14 and 15 of the booklet "Montana Juvenile Law."

SECTION 20. BASIC RIGHTS--

Alternative I.

A. (1) When a youth alleged to be in need of assistance under Section 3(R) 1 through 5 is taken into custody, the following requirements must be met:

- (a) the youth shall immediately be advised of his privilege against self-incrimination;
- (b) the youth shall not be questioned prior to placement in detention except to determine his identity;
- (c) the youth shall not be questioned after placement in detention except in the presence of his counsel, parents, guardian or custodian.

(2) A law enforcement officer taking a youth into custody may question the youth about his alleged violations of the law or other reasons for taking the youth into custody if, and only if:

- (a) the law enforcement officer disposes of the matter without a complaint;
- (b) the information obtained from the youth is not recorded in any manner. Such information shall not be admitted into evidence in any proceeding under this Act.

B. Unless the youth was advised by counsel, no statement made after the youth was complained against or taken into custody, whichever occurs first, shall be used against the youth prior to the court's adjudication of the allegations against the youth.

C. In a proceeding on a petition alleging a youth to be in need of assistance as set forth in paragraph A of this section:

- (1) an extra-judicial statement that would be constitutionally inadmissible in a criminal matter shall not be received in evidence;
- (2) evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a youth; and
- (3) an extra-judicial admission or confession made by the youth out of court is

SECTION 20. BASIC RIGHTS--cont'd.

Alternative I., cont'd.

insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

D. A youth in custody shall not be fingerprinted or photographed for criminal identification purposes. Any person who willfully violates the provisions of this subsection is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a term of not more than one year or the imposition of a fine of not more than one thousand dollars (\$1,000), or both imprisonment and fine.

E. In all proceedings on a petition alleging need of assistance as set forth in paragraph A of this section, the youth and parents, guardian and custodian of the youth shall be advised by the court or its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained, or if it does not appear that counsel will be retained, counsel shall be appointed for the youth unless the right to appointed counsel is waived by the youth and the parents, guardian or custodian. Neither the youth nor his parent, guardian, or custodian may waive counsel if commitment to the Department of Institutions, or any other institution may result from adjudication.

F. In proceedings on a petition alleging need of assistance under Section 3 (R) 6 through 12 of this Act the youth, the parents, guardian and custodian shall be informed that they have the right to be represented by separate counsel and, upon request, counsel shall be appointed if the person is unable to obtain counsel for financial reasons, or if in the court's discretion appointment of counsel is required in the interest of justice.

G. The court, at any stage of a proceeding on a petition under this act, may appoint a guardian ad litem for a youth who is a party if the youth has no parent, guardian, or custodian, appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

SECTION 20. BASIC RIGHTS--cont'd.

Alternative I., cont'd.

H. In a proceeding on a petition, a party is entitled to the opportunity to introduce evidence and otherwise be heard on the party's own behalf and to confront and cross-examine witnesses testifying against the party, and to admit or deny the allegations against the party in a petition.

I. Persons afforded rights under this Act shall be advised of these rights and any other rights existing under other law no later than the time of their first appearance in a proceeding on a petition under the Montana Youth Act and at any other time specified in the Youth Act or other law if that occurs prior to the proceeding.

J. All post trial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure shall be available to a youth proceeded against under this Act.

Alternative II.

A. A youth alleged to be in need of assistance shall, from the time of being taken into custody, be advised of the privilege against self-incrimination and from the time of detention in a detention facility shall not be questioned except in the presence of a parent, guardian, custodian or counsel except to determine identity.

B. Omit

C. Same as Alternative I.

D. A youth in custody shall not be fingerprinted or photographed for criminal identification purposes except by order of a youth court judge. Any person who willfully violates the provisions of this subsection is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a term of not more than one year or the imposition of a fine of not more than one thousand dollars (\$1,000) or both imprisonment and fine.

E. Same as Alternative I.

F. Same as Alternative I.

SECTION 20. BASIC RIGHTS--cont'd.

Alternative II.

G. Same as Alternative I.

H. Same as Alternative I.

I. Same as Alternative I.

J. Same as Alternative I.

Alternative III.

A. No statements or admissions of a youth made as a result of interrogation of the youth by a law enforcement official concerning acts which would constitute a crime if committed by an adult shall be admissible in evidence unless a parent, guardian, or legal custodian of the youth was present at such interrogations, and the youth and his parent, guardian, or legal custodian were advised of the youth's right to remain silent, that any statements made may be used against him in a court of law, the right to the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation, except that if a public defender or counsel representing the youth is present at such interrogation, such statements or admissions may be admissible in evidence even though the child's parent, guardian or legal custodian was not present.

B. Omit.

C. Same as Alternative I.

D. Same as Alternative I.

E. Same as Alternative I.

F. Same as Alternative I.

G. Same as Alternative I.

H. Same as Alternative I.

I. Same as Alternative I.

J. Same as Alternative I.

SECTION 20. BASIC RIGHTS--cont'd.

Alternative IV.

A. A youth alleged to be in need of assistance under Section 3 (R) 1 through 5 of this Act shall, from the time of being taken into custody, be advised of the privilege against self-incrimination and whenever reasonable under the circumstances shall not be questioned except in the presence of a parent, guardian, custodian or counsel. Information obtained from the youth in the above situation shall not be admissible against the child in any formal procedure under this Act unless the parent, guardian, custodian or counsel were present.

- B. Same as Alternative I.
- C. Same as Alternative I.
- D. Same as Alternative I.
- E. Same as Alternative I.
- F. Same as Alternative I.
- G. Same as Alternative I.
- H. Same as Alternative I.
- I. Same as Alternative I.
- J. Same as Alternative I.

Comment:

This section covers the basic rights of youths in proceedings under the Montana Youth Act. There is no comparable provision in the existing Montana Juvenile Law.

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

In general the differences between the four alternatives relate to interrogation of the youth when taken into custody. Alternative I permits no interrogation or fingerprinting if any

SECTION 20. BASIC RIGHTS--cont'd.

Comment, cont'd.

proceedings are to be filed under this Act.

Alternative II permits interrogation prior to the youth's detention and thereafter only in the presence of parents or counsel. Fingerprinting is prohibited.

Alternative III permits interrogation in the presence of parents or counsel and prohibits the use of any of the youth's statements if this is not done.

Alternative IV prohibits unreasonable interrogation.

SECTION 21. TIME LIMITATIONS ON PETITION HEARING--

Alternative I.

Unless the allegations of a petition alleging that a youth is in need of assistance under Section 3 (R) 1 through 5 are determined by a written admission of the allegations by the youth, the petition shall be dismissed with prejudice if a hearing on the petition is not begun within 15 days after all service is completed. Delays resulting from service of process or from legal actions taken in behalf of the youth shall not be included in the 15 day time limitation.

Alternative II.

Omit entirely.

Comment: This section relates to the time within which the Youth Court hearings are held. The difference between the two alternatives is that a 15 day time limitation is imposed on hearing in the Youth Court under Alternative I. Alternative II deletes any such time limitations.

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions, and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

The present Montana Juvenile Law imposes no specific time limitations on hearings in the Juvenile Court.

SECTION 22. ADJUDICATORY HEARING--

Alternative I.

A. Upon the filing of a petition alleging need of assistance the court shall hold an adjudicatory hearing to determine whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning youths falling under Section 3 (R) 1 through 5 or by a preponderance of the evidence in cases concerning youths falling under section 3 (R) 6 through 12. The hearing shall be conducted by the court separate from other proceedings. A jury trial on the allegations on the petition may be demanded by the youth, parent, guardian, custodian or counsel. If a jury trial is demanded, a jury shall be summoned forthwith. The jury's function shall be:

(1) to try the factual issue of whether or not the youth committed the acts alleged in the petition, or

(2) to try the factual issue of whether or not the youth falls under Section 3 (R) 4 through 12 of this Act, and

(3) to try the factual issue of whether or not, based upon the testimony and other evidence concerning the youth's background, history, environment and other relevant social information about the youth, it is in the youth's best interests to be adjudicated in need of assistance.

(4) to try the factual issue of whether or not the youth is in need of care or rehabilitation.

B. An adjudicatory hearing shall be recorded verbatim by whatever means the court deems appropriate. The court shall advise persons before the court of their basic rights under this Act at each separate appearance.

C. The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, shall not appear clothed in jail or prison clothing.

D. The general public shall be excluded from hearings on petitions under this Act. Only the parties, their counsel, witnesses and other persons requested by a party and approved

SECTION 22. ADJUDICATORY HEARING--

Alternative I., cont'd.

by the court may be present. If the court finds that it is in the best interest of the youth, the youth may be temporarily excluded from a hearing concerning need of assistance under Section 3 (R) 6 through 12, and during the taking of evidence on the issues of need for treatment and rehabilitation in matters coming under Section 3 (R) 1 through 5.

E. The court shall determine if the allegations of the petition are admitted or denied. If denied, the court, with or without a jury as the case may be, shall proceed to hear evidence on the petition. If the hearing is conducted without a jury, the court shall make and record its findings on whether or not the allegations of the petition are true. If the court finds the allegations have not been established, it shall dismiss the petition and order the youth released from any detention or legal custody imposed in connection with the proceedings.

F. If the court finds on the basis of a valid admission of the allegations of the petition, or on the basis of proof beyond a reasonable doubt based upon competent, material and relevant evidence, that the youth committed the acts by reason of which he is alleged in need of assistance, if may, in the absence of objection, proceed immediately to hear evidence on whether or not the youth is in need of care or rehabilitation. In the absence of evidence to the contrary, evidence of the commission of an act which constitutes a felony is sufficient to sustain a finding that a youth is in need of care or rehabilitation. If the court finds that a youth alleged to be in need of assistance under Section 3 (R) 1 through 5 is not in need of care or rehabilitation, it shall dismiss the petition and order the youth released from any detention or legal custody imposed in the proceedings.

G. If the court finds on the basis of a valid admission of the allegations of the petition, or on the preponderance of the evidence that the youth falls under Section 3 (R) 6 through 12 or is in need of care or rehabilitation under Section 3 (R) 1 through 5 the court shall schedule a dispositional hearing.

SECTION 22. ADJUDICATORY HEARING--

Alternative II.

A. Upon the filing of a petition alleging need of assistance, the court shall hold an adjudicatory hearing to determine whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning youths falling under Section 3 (R) 1 through 5, or by a preponderance of the evidence in cases concerning youths falling under Section 3 (R) 6 through 12 of this Act. The hearing shall be conducted by the court separate from other proceedings and shall be given preferential setting. A jury trial on the allegations of the petition may be demanded by the youth, parent, guardian, custodian or counsel. If a jury trial is demanded, the jury's function shall be to try the factual issues alleged in the petition.

B. An adjudicatory hearing shall be recorded verbatim by whatever means the court deems appropriate. The court shall advise persons before the court of their basic rights under this Act at each separate appearance.

C. Same as Alternative I.

D. The general public shall be excluded from hearings on petitions under this Act. Only the parties, their counsel, witnesses and other persons requested by a party or the court may be present. If the court finds that it is in the best interest of the youth, the youth may be temporarily excluded from a hearing concerning need of assistance under Section 3 (R) 6 through 12 and during the taking of evidence on the issues of need for treatment and rehabilitation in matters coming under Section 3 (R) 1 through 5.

E. Same as Alternative I.

F. Same as Alternative I.

G. Same as Alternative I.

SECTION 22. ADJUDICATORY HEARING--

Alternative III.

A. Upon the filing of a petition alleging need of assistance the court shall hold an adjudicatory hearing to determine whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning youths falling under Section 3 (R) 1 through 5, or by a preponderance of the evidence in cases concerning youths falling under Section 3 (R) 6 through 12. The hearing shall be conducted by the court separate from other proceedings.

Alternative IV.

A. Upon the filing of a petition alleging need of assistance the court shall hold an adjudicatory hearing to determine whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning youths falling under Section 3 (R) 1 through 5, or by a preponderance of the evidence in cases concerning youths falling under Section 3 (R) 6 through 12. The hearing shall be conducted by the court separate from other proceedings. A jury trial on the allegations in the petition may be demanded by the youth, parent, guardian, custodian or counsel, and granted with the consent of the youth division judge.

Comment: This section deals with procedures and requirements in the adjudicatory phase of the Youth Court proceedings. In general, all Youth Court hearings involve (1) an adjudicatory phase, and (2) a dispositional phase. The adjudicatory phase is concerned with whether or not the youth committed the acts constituting the alleged delinquency, or in cases alleging dependency or neglect or youth in need of supervision, whether or not in fact the dependency, neglect or need of supervision is present. A different set of constitutional requirements apply to the adjudicatory phase of a Youth Court hearing than apply to the dispositional phase.

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and

SECTION 22. ADJUDICATORY HEARING--cont'd.

Comment, cont'd.

the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

The difference in the four alternatives generally relate to jury trials in Youth Court proceedings. Alternative I provides for the right to a jury trial on request of the youth, his parents, or his counsel with specific issues that the jury shall try that are enumerated. Alternative II provides generally for the right to a jury trial without enumerating the specific issues that the jury must try. This alternative closely resembles current Montana law. Alternative III provides for no right to a jury trial. Alternative IV provides for a jury trial with the consent of the judge.

In connection with Alternative III, the United States Supreme Court has ruled that there is no requirement of a jury trial in juvenile court cases under the provisions of the United States Constitution. However, under the new Montana Constitution, a jury trial in juvenile proceedings may be required under Article II, although this has not been ruled upon to date.

SECTION 23. DISPOSITIONAL HEARING--

Alternative I.

A. Within 10 days of the adjournment of an adjudicatory hearing, the court shall conduct a dispositional hearing.

B. Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer and/ or social worker concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. Where there is evidence that the youth may be mentally ill or mentally retarded, the youth division may with the youth's consent or the consent of the parent, guardian, or custodian have the youth examined, and the results of the examination shall be made available to the court as a part of the social summary or predisposition report. The court may order the examination of a parent, guardian, or custodian who gives his consent, and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report.

C. All parties of interest present at the adjudicatory hearing shall, upon their request, be furnished a copy of the social summary or predisposition report prior to the dispositional hearing.

D. The dispositional hearing shall be conducted in the manner set forth in Section 22 subsections B, C, and D. The court shall hear all evidence relevant to the proper disposition best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection B of this section.

Alternative II.

A. Within 15 days of the adjournment of an adjudicatory hearing, or unless continued with good cause shown by the court, the court shall conduct a dispositional hearing.

SECTION 23. DISPOSITIONAL HEARING-- cont'd.

Alternative II., cont'd.

B. Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The Youth Division Court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent, guardian or custodian, who gives his consent, and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, custodian or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and have the right to cross examine said parties at the dispositional hearing.

C. Defense counsel present at the adjudicatory hearing shall, upon request, be furnished with a copy of the social summary or predisposition report and psychological report to the predispositional hearing.

D. Same as Alternative I.

Comment: This section deals with the dispositional phase of a Youth Court hearing. The dispositional phase of such hearing is concerned with the question of what shall be done with the youth after his delinquency, dependency or neglect, or need of supervision is established.

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

SECTION 23. DISPOSITIONAL HEARING--cont'd.

Comment, cont'd.

The differences between the two alternatives largely concern the social summary and predisposition report. In both alternatives such reports are required. Alternative I does not allow the youth to confront or cross-examine the persons preparing such reports but alternative II gives the youth this right. There is a 10 day requirement on holding the dispositional hearing in alternative I, while Alternative II imposes a 15 day requirement.

SECTION 24. DISPOSITION OF YOUTH ADJUDICATED TO BE IN NEED OF ASSISTANCE.

Alternative I.

A. If a youth is found to fall under Section 3 (R) 6 through 12 of this Act, the court may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(1) permit the youth to remain with his parents, guardian or custodian subject to those conditions and limitations the court may prescribe;

(2) place the youth under protective supervision; or

(3) transfer legal custody of the youth to any of the following:

(a) an agency responsible for the care of such youths;

(b) a child-placing agency willing and able to assume responsibility,

for the education, care and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care for the youth; or

(c) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth.

(d) order such further care and treatment as the court may deem in the best interests of the youth.

B. If a youth is found to fall under Section 3 (R) 1 and 2, the court may enter its judgment making the following dispositions for the supervision, care and rehabilitation of the youth:

(1) any disposition authorized under subsection A above

(2) transfer legal custody to an agency responsible for the care and rehabilitation of such youth;

(3) place the youth on probation under those conditions and limitations as the court may prescribe.

If the court disposes of a case under subsection B (2) of this section the judge may order a transfer or commitment to remain in effect for a period of 45 days. During this period the youth shall be evaluated in accordance with §10-611, R. C. M., 1947. The youth shall then be

SECTION 24. DISPOSITION OF YOUTH ADJUDICATED TO BE IN NEED OF ASSISTANCE, cont'd.

Alternative I., cont'd.

returned to the court of original jurisdiction for further disposition on the basis of such evaluation

C. If a youth is found to fall under Section 3 (R) 3-5 the court may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

(1) any disposition authorized under subsection A, above;

(2) transfer legal custody to an agency responsible for the care of such youths but not to one which the custody of youths described in subsection B, above is entrusted;

(3) place the youth on probation under those conditions and limitations the court may prescribe.

D. Unless a youth is found to be in need of assistance under Section 3 (R) 3 through 12 of this Act, is also found to fall under Section 3 (R) 1 and 2 as well, the youth shall not be confined in an institution established for the care and rehabilitation of youths falling under Section 3 (R) 1 and 2 only. No youth described in subsection A, B and C above shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

E. Whenever the court vests legal custody in an agency, institution or department it must transmit with the dispositional judgment copies of a medical report, and such other clinical, predisposition or other reports and information pertinent to the care and treatment of the youth.

Alternative II.

D. Unless a youth is found to be in need of assistance under Section 3 (R) 3 through 12 of this Act, is also found to fall under Section 3 (R) 1 and 2 as well, the youth shall not be confined in an institution established for the care and rehabilitation of youths falling under Section 3 (R) 1 and 2 only. No youth described in subsections A, B and C above shall be

SECTION 24. DISPOSITION OF YOUTH ADJUDICATED TO BE IN NEED OF ASSISTANCE
cont'd.

Alternative II., cont'd.

committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes except as provided below.

In the case of such youth of the age of sixteen (16) years or older who the court feels would be a suitable person for placement at a youth forest camp, the court should notify the director of the department of institutions of such finding and the director of the department of institutions should designate to the court the juvenile facility to which the youth should be delivered for evaluation. The court may then commit such youth to the department of institutions for a period not to exceed forty-five days for the purpose of evaluation as to such youth's suitability for such placement, and order the youth delivered for evaluation to the youth facility designated by the director. If, after such evaluation, the department of institutions reports to the court that such child is suitable for placement in a youth forest camp, and if there is space available at such camp, the court may then commit such child directly to the youth forest camp under the terms and conditions of the commitment provided for in this Act. If, however, the department of institutions reports to the court that such youth is not suitable for placement in such camp, stating the reasons therefor, he shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this Act. the costs of transporting such youth to the designated youth facility for evaluation and the cost of returning the youth to the court, should that become necessary, shall be borne by the county of such youth's residence.

Comment: This section covers the options available to the Youth Court judge in disposing of Youth Court cases. The present law is found in R. C. M., 1947, § 10-611, the full text of which can be found on pages 16 to 18 of the booklet "Montana Juvenile Law".

Separate alternative provisions were included in the discussion draft due to differences of opinion among the members of the JJAC. Following public meetings on the discussion draft

SECTION 24. DISPOSITION OF YOUTH ADJUDICATED TO BE IN NEED OF ASSISTANCE, cont'd.

Comment., cont'd.

and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

In both alternatives, Section A enumerates the available options in dealing with dependent and neglected youth. Such youth are defined in Section 3 (R) 6 through 12 of this discussion draft; Section B enumerates the available options in dealing with delinquent youth; Section C enumerates the options for dealing with youth in need of supervision or assistance as defined in Section 3 of this Act.

The difference between the alternatives is in Section D of the respective alternatives. In the first alternative, dependent and neglected youth and youth in need of supervision cannot be confined in institutions for delinquents, such as the Pine Hill School in Miles City. In the second alternative dependent and neglected youth and youth in need of supervision as well as delinquent youth, can be placed in the Swan River Forest Camp.

SECTION 25. DISPOSITION OF A MENTALLY ILL OR MENTALLY RETARDED YOUTH--
Alternative I.

A. If in a hearing at any stage of a proceeding on a petition under this Act the evidence indicates that the youth is mentally ill, mentally retarded or addicted to drugs or alcohol, the court may:

- (1) order the youth detained if appropriate under the criteria established under the Montana Youth Act; and
- (2) initiate proceedings for the commitment of the youth as a mentally ill or mentally retarded minor.

B. If in a hearing at any stage of a proceeding on a petition under the Montana Youth Act the evidence indicates that the youth may be suffering from mental retardation or mental illness, the court may transfer legal custody of the youth for a period not exceeding thirty days to an appropriate agency for further study and a report on the youth's condition. If it appears from the report and study that the youth is committable under the laws of this state as a mentally retarded or mentally ill minor, the court may order the youth detained if appropriate under the criteria established by the Montana Youth Act and shall initiate proceedings for the commitment of the youth as a mentally retarded or mentally ill minor.

C. If a youth is committed as a mentally retarded or mentally ill youth under this section, the petition shall be dismissed.

Alternative II.

Omit entirely.

Comment: This section deals exclusively with disposition of cases involving mentally ill or retarded youth. There is no comparable provision in the present Montana law, although a related section providing for physical and mental examinations and care is contained in §10-625, the full text of which appears on page 23 of the booklet "Montana Juvenile Law".

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings, on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested

SECTION 25. DISPOSITION OF A MENTALLY ILL OR MENTALLY RETARDED YOUTH--
cont'd.

Comment, cont'd.

groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

The first alternative is self-explanatory. The second alternative would omit Section 25 of the discussion draft entirely.

SECTION 26. CONTINUANCE UNDER SUPERVISION WITHOUT JUDGMENT--CONSENT DECREE--DISPOSITION--

Alternative I.

A. At any time after the filing of a need of assistance petition, and before the entry of a judgment, the court may, on motion of the counsel for the youth, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services or social service agency and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree."

B. If the youth objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. If the youth does not object, but an objection is made by the youth's counsel after consultation with probation services, the court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

C. A consent decree shall remain in force for no more than six months. Prior to the expiration of the six month period, and upon the application of probation services or any other agency supervising the youth under a consent decree, the court may extend the decree for an additional six months in the absence of objection to extension by the youth. If the youth objects to the extension the court shall hold a hearing and make a determination on the issue of extension.

D. Under the provisions of this section, a youth may request a voluntary 45 day evaluation by the Department of Institutions.

E. If, either prior to discharge by probation services or social service agency or expiration of the consent decree, a new need of assistance petition is filed against the youth, or if the youth fails to fulfill the express terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement of a petition the date of reinstatement shall constitute the date of filing in computing time limitations in effect under this Act. In this event the proceeding on the petition shall be continued

SECTION 26. CONTINUANCE UNDER SUPERVISION WITH JUDGMENT--CONSENT--
DECREE--DISPOSITION--cont'd.

Alternative I., cont'd.

to conclusion as if the consent decree had never been entered.

F. A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in the subsection precludes a civil suit against the youth for damages arising from his conduct.

G. A judge who, pursuant to this section, elicits or examines information or material about a youth that would be inadmissible in a hearing on the allegations of the petition shall not, over the objection of the youth, participate in a subsequent proceedings on the need of assistance petition if:

(1) a consent decree is denied and the allegations in the petition remain to be decided in a hearing where theyouth denies his guilt; or

(2) a consent decree is granted but the need of assistance petition is subsequently reinstated.

Alternative II.

Sections A through F--Same as Alternative I.

G. The statutes of the state of Montana relating to disqualification of judges in civil proceedings shall apply to all proceedings under this Act.

Comment: This section deals with deferred prosecutions in the Youth Court under consent decrees. There is no comparable provision in the present Montana Juvenile Law.

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

SECTION 26. CONTINUANCE UNDER SUPERVISION WITH JUDGMENT--CONSENT
DECREE--DISPOSITION--cont'd.

Comment, cont'd.

The difference between the two alternatives is contained in Section G of the respective alternatives and concerns the Youth Court Judge.

Alternative I prohibits a Youth Court Judge from hearing a petition if he has obtained previous knowledge of the case from consent decree proceedings. Alternative II grants the option to the youth or his counsel to disqualify the Youth Court Judge under the civil disqualification statute under such circumstances.

SECTION 27. LIMITATION ON DISPOSITIONAL JUDGMENTS--MODIFICATION--
TERMINATION OR EXTENSION OF COURT ORDERS--

Alternative I.

A. A judgment vesting legal custody of a youth in an agency shall remain in force for an indeterminate period not exceeding one year from the date entered.

B. The agency to which legal custody is transferred has the exclusive power to parole or release the youth.

C. A judgment vesting legal custody of a youth in an individual shall remain in force for one year from the date entered unless sooner terminated by court order.

D. A judgment of probation or protective supervision shall remain in force for an indeterminate period not exceeding one year from the date entered.

E. A youth shall be released by an agency when it appears that the purpose of the order has been achieved before the expiration of the one year period. The release and the reasons therefor shall be reported promptly to the court in writing by the releasing authority.

F. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by:

(1) a youth whose legal custody has been transferred to a person, and who requests the court for modification or termination of the judgment because the purpose of the order has been achieved; or

(2) a person vested with legal custody, or responsibility of protective supervision, who requests the court for an extension of the judgment on the grounds that the requested action is necessary to safeguard the welfare of the youth or the public interest.

G. Prior to the expiration of a judgment transferring legal custody the court may extend the judgment for an additional period if it finds that the extension is necessary to safeguard the welfare of the youth or the public interest.

H. Prior to the expiration of a judgment of probation or protective supervision, the court may extend the judgment for an additional period if it finds that the extension is necessary to

SECTION 27. LIMITATION ON DISPOSITIONAL JUDGMENTS--MODIFICATION--
TERMINATION OR EXTENSION OF COURT ORDERS--cont'd.

Alternative I., cont'd.

protect the community or to safeguard the welfare of the youth.

I. When a youth reaches twenty-one years of age all judgments affecting the youth then in force automatically terminate.

J. The court may dismiss a motion if it finds after preliminary investigation that the motion is without substance. If the court is of the opinion that the matter should be reviewed, it may, upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings on petitions alleging delinquency. The court may terminate a judgment if it finds that the youth is no longer in need of care, supervision or rehabilitation, or it may enter a judgment extending or modifying the original judgment if it finds that action necessary to safeguard the youth or the public interest.

Alternative II.

A. A judgment vesting legal custody of a youth in an agency shall remain in force for an indeterminate period.

Comment: This section deals with time limitations, custody orders, protective orders and dispositional judgments or modifications in Youth Court proceedings.

There is no comparable provision in existing Montana law, but related provisions imposing age limitations are found in R.C.M., §§ 10-613 and 80-2204, as amended. These provisions can be found on pages 19 and 20 of the booklet "Montana Juvenile Law".

The difference in the two alternatives lies in the time limitations on youth court orders and judgments. Alternative I imposes a times limitation of 1 year from the date of entry with an additional year under certain circumstances. Alternative II provides that custody orders remain in effect for an indefinite period.

SECTION 28. APPEALS--

A. Any party may appeal from a judgment of the court to the Supreme Court in the manner provided by law. The appeal shall be heard by the Supreme Court upon the files, records, and transcript of the evidence of the juvenile court. Other than in the official reports of the Supreme Court, the name of a youth on appeal, shall not appear in any publication.

B. The appeal to the Supreme Court does not stay the judgment appealed from, but the Supreme Court may order a stay upon application and hearing consistent with the provisions of this act if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to, or withholds it from, one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

C. A youth who has filed notice of appeal shall be furnished a transcript of the proceedings or as much of it as is requested at public expense.

Comment: This section provides for appeals to the Montana Supreme Court of Youth Court cases. The present law on appeals is contained in §10-630, the full text of which appears on page 25 of the booklet "Montana Juvenile Law."

While current law and the discussion draft section are generally the same, the discussion draft provides that the name of the youth be deleted from the appeal proceeding records and that the youth be provided with a transcript at public expense.

SECTION 29. PROCEDURAL MATTERS--

A. When it appears during the course of any proceeding under the Montana Youth Act that some finding or remedy other than or in addition to those indicated by the petition or motion appears from the facts to be appropriate, the court may, either by its own motion or on motion by the county attorney or that of counsel for the youth, amend the petition or motion, and proceed to hear and determine the additional issues, findings or remedies as though originally properly sought.

B. Upon application of a party the court shall issue, and upon its own motion the court may issue, subpoenas requiring attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing.

C. Subject to the laws relating to the procedures therefor and the limitations thereon, the court may punish a person for contempt of court for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders.

D. In any proceeding under the Montana Youth Act, either on motion of a party or on the court's own motion, the court may make an order restraining the conduct of any party over whom the court has obtained jurisdiction if:

(1) a judgment of disposition has been made in a proceeding on a petition;

(2) the court finds that the person's conduct is or may be detrimental or harmful to the youth and will tend to defeat the execution of the judgment of disposition made; and

(3) due notice of the motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed.

Comment: This section deals with miscellaneous procedural matters in Youth Court cases. Generally, the same procedural remedies are made available in Youth Court cases that are available in District Court cases involving adults. The procedural subjects covered are self-explanatory.

SECTION 30. COURT COSTS AND EXPENSES--

A. The following expenses shall be a charge upon the funds of the court upon their certification by the court:

- (1) the costs of medical and other examinations and treatment of a youth ordered by the court;
- (2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;
- (3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses and other like expenses incurred in any proceeding under the Montana Youth Act as provided for by law; and
- (4) reasonable compensation of a guardian ad litem appointed by the court.

B. If, after due notice to the parents or other persons legally obligated to care for and support the youth, and after a hearing, the court finds that they are financially able to pay all or part of the costs and expenses in subsections A(1, 2 & 4) the court shall order them to pay the costs and expenses and may prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the court for remittance to those to whom compensation is due.

C. Whenever legal custody of a youth is vested in someone other than the youth's parents, the court, after notice to the parents or other persons legally obligated to support the youth and, after a hearing, may order the parent or other legally obligated person to pay the custodian in the manner the court directs a reasonable sum that will cover all or part of the expenses of the support and treatment of the youth subsequent to the entry of the order for payment. If the parent or other legally obligated person willfully fails or refuses to pay the sum ordered, the court may proceed with contempt charges and the order for payment may be filed and if filed shall have the effect of a civil judgment.

Comment: This section covers payment of court costs and expenses in Youth Court cases. It generally provides for the payment of court costs and expenses from public funds

SECTION 30. COURT COSTS AND EXPENSES--cont'd.

Comment, cont'd.

with provisions for reimbursement by a youth's parents if they are financially able to pay and contempt proceedings for violation of an order to pay.

There is no comparable provision in Montana law at present other than a general provision requiring county commissioners to provide funds to operate the juvenile court which are found in § 10-631, the full text of which appears on page 25 of the booklet "Montana Juvenile Law."

SECTION 31. PURCHASE OF CARE FROM PRIVATE AGENCY BY PUBLIC AGENCY

When the legal custody of a youth is vested in a public agency under the provisions of this Act the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency deems necessary but not less often than once each six months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as as the public agency deems necessary.

Comment: This section deals with placement of a youth with a private agency and payment of the expenses of such a placement. This section is self-explanatory. There is no comparable statute under the existing Montana law.

SECTION 32. PROBATION REVOCATION--DISPOSITION--

Alternative I.

A youth on probation incident to an adjudication of being in need of assistance under 3 (R) 1 through 5 and who violates a term of the probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be begun by filing in the original proceeding a petition styled as a "Petition to Revoke Probation". Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging need of assistance. Procedures of the Montana Youth Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations. The standard of proof in probation revocation proceedings shall be evidence beyond a reasonable doubt and the hearings shall be before the court without a jury. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on need of assistance petition. If a youth is found to have violated a term of his probation, the court may extend the period of probation or make any other judgment of disposition that would have been appropriate in the original disposition of the case.

Alternative II.

A youth on probation incident to an adjudication of being in need of assistance under 3 (R) 1 through 5 and who violates a term of the probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be begun by filing in the original proceeding a petition styled as a "Petition to Revoke Probation". Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging need of assistance. Procedures of the Montana Youth Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations. The standard of proof in probation revocation proceedings shall be a preponderance of the evidence

SECTION 32. PROBATION REVOCATION--DISPOSITION--

Alternative II., cont'd.

and the hearings shall be before the court without a jury. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a need of assistance petition. If a youth is found to have violated a term of his probation, the court may extend the period of probation or make any other judgment of disposition that would have been appropriate in the original disposition of the case.

Comment: This section deals with revoking probation of a youth for violation of probation orders and subsequent disposition of the case. There is no specific statutory provision covering this in the present Montana law.

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft, and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

The difference between the alternative relates to the standard of proof required in the probation revocation proceedings. Alternate I requires "proof beyond a reasonable doubt" (the standard of proof required in an adult criminal trial), while Alternate II requires "proof by a preponderance of the evidence(the standard applicable in civil proceedings.)

SECTION 33. TRANSFER TO CRIMINAL COURT--

Alternative I.

A. After a petition has been filed alleging need of assistance under Section 3 (R) (1) the court may, before hearing the petition on its merits, transfer the matter for prosecution in the district court if:

(1) the youth charged was sixteen (16) years of age or more at the time of the conduct alleged to be an unlawful act and the unlawful act is one or more of the following:

- (a) murder
- (b) manslaughter
- (c) arson in the first or second degree
- (d) assault in the first or second degree
- (e) robbery
- (f) burglary
- (g) carrying a deadly weapon with intent to assault
- (h) rape, under the circumstances set for in R. C. M., 1947, 94-4101 (3) and (4)

(2) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging need of assistance under Section 3 (R) (1), except that the hearing will be to the court without a jury; and

(3) notice in writing of the time, place and purpose of the hearing is given the youth parents, guardian or custodian at least 10 days before the hearing; and

(4) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

- (a) the youth committed the delinquent act alleged; and
- (b) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and
- (c) the alleged offense was committed in an aggressive, violent, premeditated

SECTION 33. TRANSFER TO CRIMINAL COURT--cont'd.

Alternative I., cont'd.

(5) the court shall also consider the following factors :

(a) the sophistication and maturity of the youth as determined by consideration of his home, environmental situation, emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the Juvenile Department, other law enforcement agencies, juvenile courts in other jurisdictions prior periods of probation and prior commitments to juvenile institutions;

(c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services and facilities currently available to the juvenile court;

(6) Prior to hearing any evidence relevant to the issues described in subparagraphs a, b, and c, or paragraph (5), the court shall hear all evidence relevant to subparagraph (1) of paragraph A and shall make the specific finding required by that paragraph.

(7) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the juvenile court was waived and the case was transferred to district court.

(8) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth shall be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the juvenile court unless the case has been transferred as provided in this section.

(9) Upon the order of the juvenile court transferring the case to the district court, the County Attorney shall have 10 days to file an information against the youth. If the County Attorney fails to file the information within the 10 days, the matter shall revert to the juvenile court for disposition as provided by this Act.

SECTION 33. TRANSFER TO CRIMINAL COURT--cont'd.

Alternative II.

A. After a petition has been filed alleging need of assistance under Section 3 (R) (1) the court may, before hearing the petition on its merits, transfer the matter for prosecution in the district court if:

(1) the youth charged was sixteen (16) years of age or more at the time of the conduct alleged to be an unlawful act and the unlawful act is one or more of the following:

- (a) murder
- (b) manslaughter
- (c) arson in the first or second degree
- (d) assault in the first or second degree
- (e) robbery
- (f) burglary
- (g) carrying a deadly weapon with intent to assault
- (h) rape, under the circumstances set forth in R.C.M., 1947, 94-4101 (3) and

(2) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging need of assistance under section 3 (R) (1) except that the hearing will be to the court without a jury; and

(3) notice in writing of the time, place and purpose of the hearing is given the youth, parents, guardian, or custodian at least 10 days before the hearing; and

(4) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

- (a) the youth committed the offense alleged; and
- (b) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and
- (c) the alleged offense was committed in an aggressive, violent, or pre-

SECTION 33. TRANSFER TO CRIMINAL COURT--cont'd.

Alternative II., cont'd.

mediated manner.

(5) the court shall also consider the following factors:

(a) the sophistication and maturity of the youth as determined by consideration of his home, environmental situation, emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the Juvenile Department, other law enforcement agencies, juvenile courts in other jurisdictions, prior periods of probation and prior commitments to juvenile institutions;

(c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services and facilities currently available to the juvenile court;

(6) Prior to hearing any evidence relevant to the issues described in subparagraphs (a), (b), and (c) or paragraph (5), the court shall hear all evidence relevant to subparagraph (1) of paragraph A and shall make the specific finding required by that paragraph.

(7) Upon transfer to district court, the judge shall publish a complete list of reasons as to why the jurisdiction of the juvenile court was waived and the youth was transferred to district court.

(8) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth shall be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the juvenile court unless the case has been transferred as provided in this section.

Alternative III.

Same as Alternative I with (9) added as follows:

Upon the order of the court transferring the case to the district court, the County Attorney shall file the information against the youth without unreasonable delay.

SECTION 33. TRANSFER TO CRIMINAL COURT--cont'd.

Alternative IV. same as Alternative III with (10) added as follows:

(10). A rebuttable presumption shall exist that all youths accused of committing the offense enumerated in subsection A (1) above can be effectively processed without transfer to adult criminal court.

Comment: This section deals with the transfer of cases from the Youth Court to the adult criminal court for prosecution where the youth is over 16 years old and is accused of committing the enumerated serious crimes.

The present law permits transfer in such cases but does not spell out detailed procedures and conditions of transfer; present law is contained in § 10-603(c), the full text of which is found on pages 12 and 13 of the booklet "Montana Juvenile Law."

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

Alternative I incorporates United States Constitutional requirements reflected in the decision of the United States Supreme Court in Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966). Alternative II generally does the same but does not apply the detailed standards required by the Kent decision, substituting instead the broader and more general standards contained in subsection 5 of the alternative. Alternative III is the same as Alternative I except the county attorney is required to file the charges in district court following the order of transfer "without unreasonable delay" rather than "within 10 days." Alternative IV is the same as Alternative I except that it contains a rebuttable presumption against transfer to adult criminal court.

SECTION 34. LAW ENFORCEMENT RECORDS--

Alternative I.

A. Law enforcement and youth division records and files concerning a youth shall not be open to public inspection nor their contents disclosed to the public unless so ordered by the court.

B. Inspection of law enforcement and youth division records and files concerning a youth is permitted by the following :

- (1) a youth division court having the youth currently before it in any proceeding;
- (2) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;
- (3) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;
- (4) Montana law enforcement officers when necessary for the discharge of their immediate duties;
- (5) a district court in which the youth is convicted of a criminal offense for the purpose of a presentence.
- (6) officials of the Department of Institutions and of facilities having legal custody of the youth;
- (7) the youth, his parent, guardian or custodian or counsel.

C. Except as allowed by this section, whoever discloses, receives, makes use of or knowingly permits the use of information concerning a youth known to the law enforcement officer directly or indirectly derived from law enforcement records or files concerning a youth, or acquired in the course of official duties, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one year or imposition of a fine of not more than one thousand dollars (\$1,000) or both imprisonment and fine.

SECTION 34. LAW ENFORCEMENT RECORDS--

Alternative II.

A. Law enforcement and youth division records and files concerning a youth shall not be open to public inspection nor their contents disclosed to the public unless so ordered by the court. The prohibition of this subsection shall not apply to a youth's traffic records.

B. Omit (3).

Comment: This section pertains to the separation of records of juveniles from those of adults in law enforcement and youth division files, and the confidentiality of the records, specifying those persons entitled to see such records and providing penalty for unauthorized disclosure.

The present Montana law on this subject are §10-623 and 10-633 at pages 23 and 25 of the booklet "Montana Juvenile Law."

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

Both alternatives prohibit disclosure of law enforcement records without a court order. Alternative I enumerates the persons and circumstances under which a court order permitting inspection is permissible. Alternative II omits disclosure to a district court for presentence purposes and excepts records of traffic offenses.

SECTION 35. SOCIAL AND LEGAL RECORDS--INSPECTIONS--
Alternative I.

A. Social, medical and psychological records, including reports of preliminary inquiries, predisposition studies and supervision records of probationers shall be open to inspection only to the following:

- (1) the judge, probation officers and professional staff of the youth division;
- (2) representatives of any agency providing supervision and having legal custody of a youth;
- (3) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (4) a court and its probation and other professional staff, or an attorney for the party, for use in considering the sentence to be imposed upon a convicted person, who, prior thereto, had been a party to proceedings in the Youth Court.
- (5) the youth who is the subject of the reports or records; or
- (6) the county attorney.

B. All or any part of records information secured from records listed in subsection A, when presented to and used by the court in a proceeding under this Act, shall also be made available to the parties to the proceedings and their counsel.

C. All other court records, including docket, petitions, motions and other papers filed in a case, transcripts of testimony, findings, verdicts, orders, and decrees shall be open to inspection only by those persons and agencies listed in subsection A.

D. Except as allowed by this section, whoever discloses, receives, makes use of or permits the use of information concerning a youth before the court, directly or indirectly derive from the records listed in subsection A, or acquired in the court of official duties, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a period of not more than one year or the imposition of a fine of not more than one thousand dollars (\$1000) or both imprisonment and fine.

SECTION 35. SOCIAL AND LEGAL RECORDS--INSPECTIONS--cont'd.

Alternative II.

Same as Alternative I, except omit A (5).

Comment: This section pertains to restricting accessibility to the social, medical and psychological records of any youth, as well as any records of judicial proceedings to enumerated parties; it provides penalties for unauthorized disclosure. There is no comparable provision in current Montana law.

SECTION 36. DESTRUCTION OF RECORDS--

A. All court findings, orders, judgments and the legal and social files and records of the court, probations services and law enforcement agencies pertaining to a youth falling under this Act shall be physically destroyed when the youth reaches the age of eighteen (18) years.

B. In those cases in which jurisdiction of the court or an agency is extended beyond the youth's eighteenth birthday the above records and files shall be destroyed upon termination of the extended jurisdiction.

C. Whoever discloses, receives, inquires about, makes use of or knowingly permits the use of information derived from such destroyed records shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one year or the imposition of a fine of not more than one thousand dollars (\$1000.00), or both imprisonment and fine.

D. This section shall not apply:

(1) when contradictory to federal law;

(2) when the youth, by written notice to the youth division, requests that his records be sealed and maintained;

(3) to records dealing with a youth's traffic offenses.

Comment: This section pertains to the destruction of all records of any youth proceeded against under this Act when jurisdiction of the court ends. Exceptions are enumerated in subsection D. The provision also provides a penalty for disclosure of or inquiry about such records. There is no comparable provision in current Montana law.

SECTION 37. YOUTH DIVISION JUDGE--

A. Each judicial district in the State shall have at least one judge of the youth division. His duties shall be:

- (1) to appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;
- (2) to conduct hearings on petitions as provided for in Sections 22 and 23 of this Act;
- (3) to assist youth division personnel in carrying out their duties as set forth in Sections 40 and 41 of this Act; and
- (4) to perform any other functions consistent with the legislative purpose of this Act.

B. In each multi-judge judicial district the judges shall, by court rule, designate one of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as Youth Court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as Youth Court judge and continuity in the operation and policies of the Youth Court in the county having the largest population in the judicial district shall be the principal consideration of the rule.

If the judges in any multi-judge judicial district do not establish such court rule within 60 days of the enactment of the Montana Youth Act, the Montana Supreme Court shall establish an appropriate rule for such judicial district.

Comment: This section pertains to the duties of the Youth Division judge and the selection of the Youth Division judge in a multi-judge judicial district. The present law covering this subject is § 10-627, the full text of which can be found on page 21 of the booklet "Montana Juvenile Law."

SECTION 38. REFEREE--

Alternative I.

A. The youth division judge may appoint one or more referees to hear complaints, referrals, preliminary inquiries and informal and consent decrees.

B. The referee will have the power to dismiss the case, place a youth on probation, place the youth in a foster home or group home.

C. The referee shall be the administrator of the youth division Probation Office. If there is more than one person appointed to act as referee, the judge shall appoint one of them as administrator.

D. The referee shall not be responsible for the direct counseling of probationers. All requirements for probation officers to population ratio must be met exclusive of the referee.

E. A person may act as referee in one county and as probation officer in another.

F. The referee shall have the same qualifications as a probation officer as set forth in Section 39 of this Act, and, in addition, shall possess a working knowledge of the law pertaining to the youth division.

G. Upon the conclusion of a hearing before a referee he shall transmit written findings and recommendations for disposition to the judge. Prompt written notice and copies of findings and recommendations shall be given to the parties to the proceeding. The written notice shall also inform them of the right to a rehearing before the judge.

H. A rehearing may be ordered by the judge at any time and shall be ordered if a party files a written request therefor within 10 days after receiving the notice required in subsection

I. Unless a rehearing is ordered the findings and recommendations become the findings and order of the court upon written confirmation by the judge.

Alternative II.

A. The Youth Division judge may appoint one or more members of the Montana Bar to serve as referee to the Youth Division.

B. These referees shall hear complaints, referrals, preliminary inquiries, and informal

Alternative II., cont'd.

and consent proceedings.

C. The referee will have the power to dismiss the case, place a youth on probation, place the youth in a foster home or in the care of any agency except a correctional institution.

D. The referee shall not be responsible for the direct counseling of probationers. All requirements for probation officers to population ratio must be met exclusive of the referee.

E. Upon the conclusion of a hearing before a referee he shall transmit written findings and recommendations for disposition to the judge. Prompt written notice and copies of the findings and recommendations shall be given to the parties to the proceeding. The written notice shall also inform them of the right to a rehearing before the judge.

F. A rehearing may be ordered by the judge at any time and shall be ordered if a party files a written request therefor within 10 days after receiving the notice required in subsection E.

G. Unless a rehearing is ordered the findings and recommendations become the findings and order of the court upon written confirmation by the judge.

Alternative III.

Omit section entirely.

Comment: This section pertains to appointing a referee for hearing certain matters under this Act, the duties of the referee, his qualifications, and appeals from his decisions.

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

The section provides that the use of a referee is optional with the Youth Court Judge. The second alternative provides that the referee be a member of the Montana Bar, and that his function is separate from the Youth Division. The third alternative deletes the section. There are no provisions existing in Montana law permitting the use of referees in Youth Court

SECTION 39. PROBATION OFFICERS--POWERS--DUTIES--QUALIFICATIONS--

Alternative I.

A. The youth division judge of each judicial district shall appoint probation officers to carry out the purpose and intent of this Act. There shall be appointed one probation officer for each fifteen thousand (15,000) residents within the particular judicial district. A chief probation officer shall be appointed to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office and clerical personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this Act.

B. After July 1, 1975, any person appointed as a probation officer must have the following qualifications:

(1) a bachelor's degree from an accredited college or university in the behavioral sciences; at least one year's experience in work of a nature related to the duties of a probation officer as set out below: or

(2) a bachelor's degree in any field and at least three years experience in work related to the duties of a probation officer as set forth below.

C. Prior to July 1, 1975, the judge may appoint any reputable person with at least experience in work of a nature related to the duties of a probation officer to serve as probation officer.

D. A probation officer shall:

(1) receive and examine complaints and allegations that a youth is in need of assistance for the purpose of initiating a proceeding under this Act in the youth division court.

(2) make appropriate referrals of cases presented to him to other agencies where appropriate.

(3) make predisposition studies and submit reports and recommendations to the

SECTION 39. PROBATION OFFICERS--POWERS--DUTIES--QUALIFICATIONS--cont'd.

Alternative I., cont'd.

(4) supervise, assist and counsel youth placed on probation or under his supervision;
and

(5) perform any other functions designated by the court.

E. A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out the duties set forth in this section.

Alternative II.

Same as Alternative I. except omit Section D (1).

Alternative III.

Same as Alternative I with the following change in D (1).

D. (1) screen complaints and allegations that a youth is in need of assistance and refer proper ones to the County Attorney for an examination of legal sufficiency or for initiating other proceedings under this Act.

Comment: This section pertains to the appointment of probation officers and staff of the youth division office by the Youth Division Judge, and the powers, duties and qualifications of probation officers.

The present Montana law is found in §§ 10-622 and 10-632 the full texts of which appear on pages 22 and 23 of the booklet "Montana Juvenile Law".

Separate alternative provisions were included in the discussion draft due to differences of opinion among members of the JJAC. Following public meetings on the discussion draft and the receipt of comments, suggestions and criticisms from the general public, interested groups, individuals and agencies, a decision will be made by the JJAC as to which alternative will be placed in the final draft for submission to the 1974 Legislature.

Alternative I, in subparagraph D(1) requires the probation officer to receive and examine complaints and allegations directed against a youth. The second alternative would delete these functions entirely. The third alternative provides that the probation officer would screen and then refer them to the county attorney for action.

SECTION 40. ORDER OF ADJUDICATION--NON-CRIMINAL--

No commitment of any youth to any institution under this Act shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this Act. Neither the disposition of a youth under this Act, nor evidence given in Youth Court proceedings under this Act, admissible in evidence except as otherwise provided in this Act.

Comment: This section pertains to preventing any criminal stigma from attaching to any youth proceeded against under this Act, and prevents any disposition or evidence obtained under this Act from being used in any other proceeding. The present Montana law §10-611(4), is almost identical, and can be found on page 18 of the booklet, "Montana Juvenile Law".

SECTION 41. EXTENSION OF YOUTH COURT JURISDICTION--

A. A district court shall, on its own motion, or on the motion of the county attorney extend the jurisdiction of the court to persons eighteen years of age or older who are accused of committing a criminal offense under the laws of the State of Montana if it appears that the person charged can be effectively rehabilitated by the use of the facilities available to the youth division and the person charged has given his written consent to such extension.

B. If the district court transfers the case of any adult to the youth division court, the jurisdiction of the district court shall terminate and the adult transferred shall be subject to all the provisions of this Act.

C. In no case shall the disposition of an adult under this section be longer in time than the maximum sentence possible for the crime charged under the Criminal Code of the State of Montana.

Comment: This section pertains to enabling the Youth Division Court, on motion of the county attorney or the district judge, to extend its jurisdiction to persons 18 years of age or older charged with a criminal offense, rather than proceeding against the person in adult criminal court. where effective rehabilitation appears more likely using the facilities and procedures of the youth division. There is no comparable provision in current Montana law.

SECTION 42. COMMITMENT TO DEPARTMENT OF INSTITUTIONS--TRANSFER OF
PLACEMENT BY DEPARTMENT--HEARING AND APPEAL--

A. An order of commitment pursuant to Section 24 (B) may be made to the Department of Institutions, and when made, shall authorize placement by the Department of the youth with any agency, association or person under the control and supervision of the Department, that, in its discretion, is consistent with the best interests and rehabilitation of such youth.

B. Thereafter, any transfer of a youth by the Department from a less restrictive or confining placement to a more restrictive or confining placement shall only be after 10 days notice to the youth of the proposed transfer. The notice shall set forth the date and place of the transfer, the date and place of the hearing on review from the order of transfer, and the name of counsel appointed for the youth for this hearing on review; but, nothing herein shall prevent the youth, with the advice of counsel, from waiving said review.

C. The Department shall provide for an Administrative Board of Review of not less than 3 members, for each such hearing, shall prescribe the manner and form in which hearings on review shall be conducted, and shall adopt such rules and regulations as are necessary to effect a prompt and full review, including the right to subpoena witnesses and records. A verbatim record shall be made of any such hearing.

D. The Administrative Board of Review shall promptly render and serve upon all necessary parties a written decision affirming or denying the order of transfer, which shall contain findings of the reasons for the decision; either the Department or the youth may appeal from the decision of the Administrative Board of Review to the district court of the county in which the review hearing was held by serving and filing a notice of appeal with said court within 10 days of the date of the decision of the Board.

E. The district court, upon receipt of a notice of appeal, shall order the Department to promptly certify to the court a record of all proceedings before the Board and shall proceed to a prompt hearing on the appeal; said hearing shall be based upon the record on appeal. The decision of the Board shall not be altered except for abuse of discretion or manifest injustice.

SECTION 42. COMMITMENT TO DEPARTMENT OF INSTITUTIONS--TRANSFER OF
PLACEMENT BY DEPARTMENT--HEARING AND APPEAL--cont'd.

F. The order of transfer shall be stayed pending the decision of the Board, but not otherwise.

G. Nothing herein shall prohibit the detention of the youth pending the review of the Board, when reasonable grounds exist for the belief that taking the youth into custody is necessary or advisable to protect the youth from physical, mental or moral injury to himself from any cause.

Comment: This section pertains to an automatic review of any transfer of any youth under commitment to the Department of Institutions from a less restrictive or confining placement to a more restrictive or confining placement; provides for the appointment of counsel for a youth in such cases, for procedures for review and the right to appeal to the district court from the decision of the Administrative Board of Review. There is no comparable provision in the current Montana Juvenile Code.

SECTION 43. FOSTER HOMES

A. The youth division of each judicial district shall establish procedures for finding, maintaining and administering temporary and permanent foster homes for youths in danger of becoming or adjudicated in need of assistance under Section 3 (R) 1 and 2 of this Act.

B. The foster homes established under this section shall be maintained at a rate consistent with other foster homes established for other purposes under law.

C. All foster homes established shall be financed by the Department of Social and Rehabilitation Services as provided for in the Revised Codes of Montana, 1947, §71-210 (b).

Comment: This section provides for establishment of foster homes as an alternative disposition for youths proceeded against under this Act. Current experience shows that the foster homes, if properly established, can be of great benefit to youths and far less expensive to the state than commitment to an institution. Current Montana law dealing with foster homes for delinquent youth can be found in R.C.M., 1947, § 10-627, the full text of which appears on page 24 of the booklet "Montana Juvenile Law".

SECTION 44. CONCURRENT JURISDICTION--Justice and police courts shall have concurrent jurisdiction with the youth division court over all traffic and fish and game violations alleged to have been committed by a youth except as provided for in Section 3(R)(1)

Comment: Self-explanatory

SECTION 45. PUBLICITY--

Alternative I.

A. Any proceeding against a youth under this Act shall be confidential. No youth shall be identified by name by any news media or other form of information communication.

B. Any person violating the provisions of this section shall be guilty of both a misdemeanor and contempt of court and shall be punished by imprisonment in the county jail for a period of not more than one year or the imposition of a fine of not more than one thousand dollars (\$1,000.00) or both imprisonment and fine, or in the manner provided for by law for the punishment of contempt.

Alternative II.

No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the Youth Court involving a youth in need of assistance except where a hearing or proceeding is had in the youth court on a written petition charging the commission of a felony.

Comment: This section provides for the confidentiality of a youth's name when the youth is being proceeded against under this Act, the belief being that a youth has a better opportunity of adjustment within his own community if the general public is not aware of his need of assistance. The current law in Montana is R. C. M., 1947 §10-633, the full text of which appears on page 25 of the booklet "Montana Juvenile Law".





